

# **EXHIBIT 4**

## BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	SB 355
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## UNFINISHED BUSINESS

Bill No: SB 355  
Author: Murray (D)  
Amended: 7/5/05  
Vote: 21

SENATE JUDICIARY COMMITTEE : 5-1, 4/5/05  
AYES: Dunn, Cedillo, Escutia, Figueroa, Kuehl  
NOES: Ackerman  
NO VOTE RECORDED: Morrow

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 37-2, 5/26/05  
AYES: Aanestad, Alarcon, Alquist, Ashburn, Battin, Bowen, Campbell, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Runner, Simitian, Soto, Speier, Torlakson, Vincent  
NOES: Ackerman, Hollingsworth  
NO VOTE RECORDED: Scott

ASSEMBLY FLOOR : 64-9, 8/25/05 - See last page for vote

SUBJECT : Anti-Phishing Act of 2005

SOURCE : Author

DIGEST : This bill prohibits phishing, the act of posing  
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as a legitimate company in an email, Web page, or other Internet communication in order to trick a recipient into revealing his or her personal information.

Assembly Amendments make a technical/clarifying change by deleting reference to "online business" to instead refer to "business."

ANALYSIS : Existing law does not regulate "phishing" actions, but makes fraud actionable where the following has been established: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage.

This bill enacts the Anti-Phishing Act of 2005.

This bill makes it unlawful for a person to use a Web page, email, or the Internet to misrepresent that he or she is a business (e.g., to indicate that he or she is or represents an online business without authorization from that business) and solicit or induce another person to provide his or her personal information without the authority or approval of the business.

Existing law provides that an attorney general or district attorney can seek an injunction and civil penalties of up to \$2,500 per instance for any unlawful business act or practice. An individual may seek an injunction for an unlawful business act or practice if he or she suffered an injury in fact and lost money or property as a result.

This bill provides that the following persons may bring an action against a person who violates or is in violation of Section 22948.2:

1.A person who (A) is engaged in the business of providing Internet access service to the public, owns a Web page, or owns a trademark, and (B) is adversely affected by a violation of Section 22948.2.

An action brought under this bill may seek to recover the greater of actual damages or five hundred thousand dollars (\$500,000).

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2. An individual who is adversely affected by a violation of Section 22948.2 may bring an action, but only against a person who has directly violated Section 22948.2.

The bill provides that an action brought under the above provision may seek to enjoin further violations of Section 22948.2 and recover the greater of three times the amount of actual damages or \$5,000 per violation.

The Attorney General or a district attorney may bring an action against a person who violates or is in violation of Section 22948.2 to enjoin further violations of Section 22948.2 and to recover a civil penalty of up to two thousand five hundred dollars (\$2,500) per violation in an action pursuant to the above provisions. A court may, in addition, do either or both of the following:

1. Increase the recoverable damages to an amount up to three times the damages otherwise recoverable under subdivision (a) in cases in which the defendant has engaged in a pattern and practice of violating Section 22948.2.
2. Award costs of suit and reasonable attorneys fees to a prevailing plaintiff.

The bill specifies that the remedies provided above do not preclude the seeking of remedies, including criminal remedies, under any applicable provision of law.

Multiple violations of Sections 22948.2 resulting from any single action or conduct shall constitute one violation.

#### Background

"Phishing" is a widespread technique for obtaining personal information, and is used to facilitate identity theft and other crimes. Phishers use fraudulent emails or Web sites to trick consumers into providing personal information, such as bank account numbers and social security numbers, to what is believed to be a legitimate company. The author's office explains:

Customers often receive a legitimate looking email

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that appears to be from their bank or [a] retailer with whom they do business. The consumer is often told via e-mail that a review of their account found "unusual activity" and directs them to a phony website where they are compelled to provide personal information such as their name, account number and other relevant data. Criminals have become very good at mimicking legitimate emails and setting identical Web sites.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2005-06</u>	<u>2006-07</u>
<u>2007-08</u> <u>Fund</u>		
Courts		Probably not
substantial costs	General	
Attorney General		Probably
not substantial costs	General	
	Potentially offset by awards for attorneys' fees	

SUPPORT : (Verified 8/25/05)

California Alliance for Consumer Protection  
Computing Technology Industry Association  
Microsoft  
Tech Net

ARGUMENTS IN SUPPORT : The author's office states, "According to the FBI and the Internet Crime Complaint Center, 78 percent of all criminal "phishers" are located in the United States. Of these, 15 percent of all phishing scams originate in California, the most in the nation. In 2004 alone, there were over 100,000 reports of this fraud with over 76,000 consumers losing money. In reported cases alone, consumers lost over \$193 million in 2003 and 2004.

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The California Alliance for Consumer Protection notes it has received numerous complaints in recent weeks from consumers who filled out forms on false "eBay web pages" with their personal information, thinking that those pages were authentic."

The Computing Technology Industry Association (CompTIA) states, "Billions of dollars of Californian commerce, jobs and productivity gains are tied to the spread of Internet commerce and communications. Confidence in the integrity of personal information transmitted via the Internet remains an integral part of the medium's development. However, recent independent studies, polls and national news reports reveal that phishing is greatly undermining that confidence, phishing tops the concerns of many inside and outside of the IT industry as potentially hobbling the Internet's exciting growth."

CompTIA notes that this bill "puts real 'teeth'" into its prohibitions by making each separate violation punishable by \$500,000 in damages, and tripling damages where a pattern of phishing has been established.

Microsoft states it is important to enact legislation to combat the threat of phishing, in addition to using other tools such as technology innovation, targeted enforcement, and user education. Microsoft contends that the "[s]trong laws and adequate enforcement" provided by SB 355 will be critical to addressing the phishing problem.

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Evans, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jones, Karnette, Keene, Klehs, Koretz, Laird, Leno, Levine, Lieber, Liu, Matthews, McCarthy, Montanez, Mullin, Nakanishi, Nation, Nava, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Strickland, Torrico, Tran, Umberg, Vargas, Wolk, Wyland, Yee

NOES: Cogdill, DeVore, Huff, La Malfa, Leslie, Maze,

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Mountjoy, Spitzer, Villines  
NO VOTE RECORDED: Emmerson, Haynes, La Suer, Negrete  
McLeod, Walters, Nunez, Vacancy

RJG:n1 8/26/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

